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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/209,454	12/11/1998	HIDENARI TANAKA	88125/ASAHI	6958

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EXAMINER

LASTRA, DANIEL

ART UNIT

PAPER NUMBER

3622

DATE MAILED: 05/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/209,454

Applicant(s)

TANAKA ET AL.

Examiner

DANIEL LASTRA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 24 February 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 17-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 17-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

6) Other: \_\_\_\_\_

1. Claims 17-20 have been examined.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pauly et al (U.S. 4,958,280) in view of Fay (U.S. 5,983,201).

As per claim 17, Pauly et al teach:

A method of selling prescription contact lenses comprising:  
transferring customer identification, address, and diagnostic data pertaining to a customer from a physician to a contact lens provider through a communication network (see column 1, line 11 – column 2, line 35; column 3, line 36 – column 4, line 38; column 5, lines 4-18; column 6, lines 11-33;

assigning a registration number to the customer and storing the registration number assigned in relationship with the customer identification and diagnostic data transferred to the provider (see column 6, lines 39-45);

Pauly fails to teach:

providing the registration number assigned and selling agent data for a selling agent closest in geographical relation to the customer based on the customer address data, from the contact lens provider to the customer, through the communication network;

delivering a contact lens from the selling agent to the customer; and  
transferring delivery data from the selling agent to the contact lens provider through the communication network.

However, Fay teaches:

providing the registration number assigned and selling agent data for a selling agent closest in geographical relation to the customer based on the customer address data, from the contact lens provider to the customer, through the communication network (see column 5, line 55 – column 6, line 54);

delivering a contact lens from the selling agent to the customer (see column 6, lines 35-54); and

transferring delivery data from the selling agent to the contact lens provider through the communication network (see column 6, lines 48-54).

Although the Fay system relates to the selection of eyeglass frames and not to contact lenses, it can be used to view, select, and purchase other related products (see column 9, lines 4-8). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Pauly system would deliver the purchase product, in this case contact lenses, to a selling agent that would take care of delivering the product to the customer, as taught by Fay. Therefore, if the selling agent is an optical retail store (see Fay column 6, lines 35-40), the customer would go to that store to pick up the product and this way he/she would save the shipping and handling charges.

As per claim 18, Pauly teaches:

The method of Claim 17, including delivering notification of an approaching deadline to replace the contact lens from the contact lens provider to the customer through the communication network (see column 1, lines 46-65; column 7, lines 9-21).

As per claim 19, Pauly teaches:

The method of Claim 18, including offering new contact lenses to the customer in exchange for old contact lenses and a monthly payment by the customer (see column 7, lines 9-48; column 10, lines 18-30).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pauly et al (U.S. 4,958,280) in view of Fay (U.S. 5,983,201) and further in view of the article Cashing in on quicker delivery times .

As per claim 20, Pauly fails to teach the method of Claim 17, including periodically offering for sale contact lens care articles by the contact lens provider to the customer through the communication network. However, the article Cashing in on quicker delivery times teaches about a system where the contact lens provider offers to its customers 99.99 percent on-time delivery of its product when using the contact lens provider ordering network and offers customers the option of ordering product direct from local distributors (see paragraphs 3-6). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Pauly's customers would use the contact lens provider network system to order contact lens products and would receive products updates periodically, as taught by the article. This feature would

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give customers a reliable venue to obtain the products related to their contact lens care.

***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 8:30-5:00.

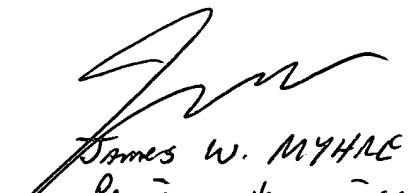
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

D.L.

Daniel Lastra

May 6, 2003

  
James W. MYHRE  
Primary Examiner  
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